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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/044,240	04/07/1993	MICHAEL MC HALE	1391-1275	6731

28455 7590 02/14/2005
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CHICAGO, IL 60610

EXAMINER

SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/044,240

Applicant(s)

MC HALE ET AL.

Examiner

Curtis E. Sherrer, Esq.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/29/04.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28, 51-56 and 65-68 is/are pending in the application.
4a) Of the above claim(s) 7, 11-14, 16, 17 and 22-27 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☐ Claim(s) 1-6, 8-10, 15, 18-21, 28, 51-56, and 65-68 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The claims containing allowable subject matter in view of the prior art are 8, 10, 18-21 and 51-56. The restricted claims are 7, 11-14, 16, 17, 22-27, and 29-50. Claim 22 is clearly restricted as it depends from claim 16, which is itself restricted. The inclusion of claim 22 in a rejection was obviously in error.

Claim Rejections - 35 USC § 112

Claims 1-6, 8-10, 15, 18-21, 28, and 51-56 and 65-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Again, Claim 53 is considered indefinite because it is unclear how it further limits Claim 51, i.e., Claim 51 is directed to multi colored chewing gum. See response to arguments below.

Again, Claims 1, 15, 18, 20, 21, and 67 use the term “generally” in describing a physical characteristic of the product and the scope of this term is unknown. See below.

Claim 65 is indefinite because the scope of the phrase “generally perpendicular” is unknown. See below.

Claim Rejections - 35 USC § 102

Claims 1, 2, 4, 5, 15, 65, 67 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Faust (Design Pat. No. 271,344) for the reasons set forth in the last Office action.

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Again, with respect to the process limitations in the instant product claims, it is not seen how they would produce a product different than what is disclosed. These limitations are given weight as far as they would influence the final product's characteristics.

Claim Rejections - 35 USC § 103

Claims 3, 6, 9, 28 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faust in view of Jones (U.S. Pat. No. 1,855,145) and in further view of applicants' admissions (page 1 of specification) for the reasons set forth in the last Office action.

The limitation directed to the strip being in the form of a rolled up tape was discussed in the last Office action. This limitation is only found in claim 6 and therefore, inherently, this claim was rejected. Applicants even argue this limitation in their instant response.

Response to Arguments

Applicants' arguments filed 11/29/04 have been fully considered but they are not persuasive.

Applicants again argue that claim 53 further limits claim 51 because the first gum can be multicolored. Applicants provide no basis for this argument. Secondly, the claim requires that the second gum be distinguishable from the second gum, and therefore it would inherently be of a different color. Nothing in the spec shows that the first and second gums are the same color or that the first gum can be multicolored. If applicants were to insert such a limitation into the claims it would be considered new matter.

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Applicants argue that those of skill in the art would know the scope of the claim term “generally.” While they refer to the drawings contained in the instant specification, these do not add any clarity to the term’s meaning. Without more explanation as to the exact meaning of the term, it is still considered to be indefinite. As to the use of the terms in an allowed application, their use was not deemed determine the patentability of the claimed apparatus. The instant claims are different and therefore, until applicants state on the record that the shapes are not a patentable distinction over the prior art, they are found to be indefinite.

With regard to the rejection based on anticipation, applicants argue that Faust teaches a gum whereby the second mass is visible from the top and the bottom. It is assumed that applicants are referring to both of the darkly shaded masses, seen in the Fig. 1, as being the “second mass.” The top dark mass is considered to be the second mass and that which is found on the bottom is a third mass. Faust anticipates the claims because the top “second mass” is only seen from the top and sides, but not the bottom. The fact that a third mass is visible from the bottom is immaterial, as the claims do not exclude other masses from being visible from the bottom.

Applicants argue that the product of Faust is bite sized in nature. There is nothing on the record that would indicate the size of the Faust chewing gum or the way in which a consumer might eat it. Further, there are no size limitations placed on applicants’ products. Similarly, applicants state that Faust teaches a “chunk” of gum. It is not clear how applicants determined that it was a chunk.

Merely because cake confections are different from gum confections does not eliminate the obviousness of their combined teachings. Both technologies stem from the confection art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

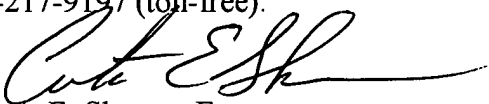
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Curtis E. Sherrer, Esq.
Primary Examiner
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